IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 62 of 2007
In
COMPANY APPLICATION No. 21 of 2007
With
COMPANY PETITION No. 63 of 2007
In
COMPANY APPLICATION No. 22 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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WELL PACK PAPERS AND CONTAINERS LTD. - Petitioner(s)
Versus
.. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 22/08/2007

ORAL JUDGMENT

1. The present petitions are for sanctioning scheme

of arrangement in the nature of De-merger and the transfer of Packing Division of Well Pack Papers and Containers Ltd. to Vishal Containers Pvt. Ltd including reduction of capital of Well Pack Papers and Containers Ltd. The scheme of arrangement is produced at Annexure C.

2. Company Petition No. 62 of 2007 is preferred by the Well Pack Papers and Containers Ltd., for sanctioning of scheme of arrangement whereas Company Petition No. 63 of 2007 is preferred by Vishal Containers Pvt. Ltd.

3. In Company Petition No. 62 of 2007 pursuant to order dated 15.09.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 21 of 2007 the meetings of the Equity Shareholders, Sole Secured Creditors and Unsecured Creditors were ordered to be convened on 23.02.2007, after issuing public advertisement the Chairman was ordered to file the report. Pursuant thereto Mr. Vinod Patel, Chairman appointed for such purpose, has filed affidavit dated 27.02.2007 together with the copy of the proceedings of the meeting showing

that scheme of arrangement is approved by all the shareholders present at the meeting, sole secured creditors Panjab National Bank and all the unsecured creditors.

4. In Company Petition No. 63 of 2007 vide order dated 15.01.2007 passed by this Court (Coram: M.R. Shah,J.) in Company Application No. 22 of 2007 as the consent letters of all the Equity Shareholders were placed on record, meeting of the Equity Shareholders of the said company for consideration of the scheme of De-merger was dispensed with.

5. Both these petitions came to be admitted on 09.03.2007 and it was ordered to advertised in two daily newspapers one Indian Express (English Daily) and Gujarat Samachar (Gujarati Daily) both Ahmedabad Edition and the publication of the Government Gazette was dispensed with. The notice was also issued to the Central Government through Regional Director, Department of Corporate Affairs, Mumbai.

6. It may be recorded that vide order dated 15.01.2007 passed by this Court in Company

Application No. 21 of 2007 (Coram: M.R. Shah, J.), the procedure prescribed Rule 48 to 62 and Rule 85 of the Company (for rules 1959) who was dispensed with. The affidavit is filed by Dharmendra M Rathod, clerk of learned Counsel Ms. Swati Soparkar dated 20.04.2007 together with the copy of the paper published pursuant to the order passed by this Court. As per the affidavit filed by Shri Vinod Patel for Company Petition No. 62 of 2007 and Shri Arvind Patel for Company Petition No. 63 of 2007 no objection is received by the petitioner or his learned Counsel in response to the advertisement opposing the scheme of arrangement or otherwise.

7. In response to the notice issued to the Central Government Mr. P.L. Malik Asstt. Registrar of Companies has filed affidavit raising objection based on the communication received by the Registrar of Companies vide letter dated 01.05.2007 from the Regional Director, Company Affairs.

8. The objection appears to be that the shares of Well Pack Papers and Containers Ltd., are listed

on the Stock Exchange at Ahmedabad, Mumbai and Saurashtra Kutch Stock Exchange, Rajkot but the De-merged company has submitted NOC only from Bombay Stock Exchange and not from other Stock Exchanges and therefore, it has been submitted that the aforesaid aspects may be considered by the Court at the time when the petitions are considered for sanctioning the scheme of arrangement.

9. The additional affidavit has been filed by Shri Vinod Patel for Company Petition No. 62 of 2007 stating that the applications were already made vide letter dated 11.06.2006 to all the three Stock Exchanges and the matter was perused further but no objections are up till now received only for Bombay Stock Exchange and not for other two Stock Exchanges.

10. As such the right of publication company for listing of its shares at particular Stock Exchange arises from the contractual obligation of listing agreement read with the provisions of Security Contract (Regulation) Act 1956. Further it appears that as per the guidelines of SEBI

issued under the security and exchange board of India Act 1992, the requirement upon the concerned company is to make an application for no objection letter which in the present case has been made by the company concerned. It is true that no objection letter has been issued by Bombay Stock Exchange and not by the above referred Stock Exchanges. But under such circumstances in the event the Stock Exchange concerned is desirous to exercise the rights as flowing from listing agreement, it may do so and at that stage the rights and contentions of the concerned petitioning company may also remain open, but such cannot be operate as a bar on the power of this Court to consider the matter for sanctioning of scheme of amalgamation or arrangement. The reference may be made to the decision of Bombay High Court in case of **Chemidye Manufacturing Company Private Ltd reported at (2006) 134 Company Cases page 58** and the another decision of the Andhra Pradesh High Court in case of **HBL NIFE Power power system Ltd report at 125 Company Cases page 289.**

11. Therefore, it appears to the Court that when the application is already made by the concerned petitioning company to the Stock Exchange concerned for no objection letter and merely because the concerned Stock Exchange has not issued no objection letter, it may not result as an obstacle in consideration of the scheme of arrangement for sanctioning or otherwise. But at the same time it deserves to be recorded that in the event there is any breach or non compliance to the listing agreement by concerned company may be on account of the scheme of arrangement or otherwise, the order of this Court in the present proceedings shall not operate as bar to the concerned Stock Exchange in taking action in accordance with law nor the same shall prejudice the rights of the concerned petitioning company in the event any action are taken by the concerned Stock Exchange.

12. No other adverse circumstances are brought to the notice of this Court.

13. Hence, subject to the aforesaid observations the scheme of arrangement is sanctioned as per the

provisions of the Companies Act.

14. The petitions are allowed to the aforesaid extent.

15. The fees of the Assistant Solicitor General is quantified at Rs. 3500/- in each petition and it would be open to the concerned company to pay the fees to the concerned counsel by A/C payee cheque directly.

(JAYANT PATEL,J.)

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